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Irish Tax Monitor

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BEPS

As progress continues in implementing the OECD's BEPS rules what are the implications for the taxation of investment funds in the post-BEPS landscape?

Andrew Quinn

Andrew Quinn, Head of Tax, Maples Group: There has been growing uncertainty internationally about the timetable and coordination of the OECD global minimum tax, particularly for the US where political agreement is still needed.

However, we can say that the likelihood at least of the EU pushing ahead to implement has increased substantially since the victory of Emmanuel Macron in the French Presidential election.

The good news is that investment funds themselves should be largely outside the scope of the global minimum tax, Pillar Two.

The reason is that often investment funds simply would not fall within the financial threshold (annual turnover of €750m plus) or the definition of a "consolidated group" which is in scope of the global minimum tax.

Secondly, even if they do, there is a wide exclusion for "investment funds" which are so called "ultimate parent entities".

The definition on which that exclusion is based is the result of work over many years between the OECD and industry, including the Irish funds industry, on the tax treatment of investment funds, and the definition has evolved over time.

The investment fund exclusion also extends to certain entities owned by investment funds that hold assets or invest funds and only carry out ancillary activities.

Of course, the devil is in the detail and certain investment funds themselves can be in scope of the global minimum tax rules.

We are seeing this for example in certain "tiered" investment structures where the investment fund is not the "ultimate parent entity" and is consolidated with another entity, so may be indeed be in scope.

The rules are complex so it is important to review existing funds structures now and assess and document if they could be in scope and what the impact could be.